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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CHARLES EDWARD KING, Defendant and Appellant.	B170821 (Los Angeles County Super. Ct. No. BA247694)

THE COURT:*

Appellant Charles Edward King appeals from the judgment following a jury trial that resulted in his conviction of one count of possession of marijuana for sale in violation of Health and Safety Code section 11359. Appellant admitted a prison prior allegation pursuant to Penal Code section 667.5, subdivision (b). The court sentenced appellant to the midterm of two years and one year for the prison prior, for a total of three years in state prison. We appointed counsel to represent appellant on this appeal.

After examination of the record, counsel filed an "Opening Brief" that contained an acknowledgment that she had been unable to find any arguable issues.

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* NOTT, Acting P. J., DOI TODD, J., ASHMANN-GERST, J.

On April 22, 2004, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. On May 14, 2004, appellant filed a supplemental brief in which he contends that: (1) he was never seen selling anything; (2) the evidence admitted at trial consisted of props; (3) his conviction and sentence were based on previous prejudicial information and constituted retaliation for his refusal to accept any deals from the prosecution; (4) the prosecution witnesses perjured themselves; and (5) probable cause cannot be established by showing merely that the officer who made the challenged arrest or search subjectively believed he had grounds for his actions.

The evidence showed that appellant was detained for selling cigarettes and tampons on the street without a permit in violation of the Los Angeles Municipal Code. Appellant was standing next to a display of the goods on a cardboard box, and there was a dolly with a boom-box beside the stand. While one of the detaining officers, Officer Rice, was checking to see if appellant had outstanding warrants, appellant ran off down the street and around the corner. Officer Rice and his partner got in their police vehicle and followed appellant, eventually detaining him in a parking lot. The officers took appellant into custody and returned to the cardboard stand to collect appellant's property and take it with appellant to the police station. As the police were loading appellant's property into their car, a bindle containing several rocks of cocaine fell from beneath the boom-box that was strapped to the luggage dolly.[1] At the police station, the officers found that the fanny pack appellant was wearing contained 19 bags of marijuana and two marijuana cigarettes. Appellant also had seven glass pipes and approximately $54 in small bills in his possession.

We conclude the evidence was sufficient to convict appellant of possession for sale of marijuana, and there are no grounds for appellant's contentions that the prosecution witnesses perjured themselves or that the physical evidence was defective.

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[1] The jury deadlocked 11 to one in favor of a guilty verdict on count 2, which charged appellant with possession for sale of cocaine base. Count 2 was subsequently dismissed.

The standard of appellate review for sufficiency of evidence was articulated in *People v. Johnson* (1980) 26 Cal.3d 557. When an appellate court seeks to determine whether a reasonable trier of fact could have found a defendant guilty beyond a reasonable doubt, it "'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*Id*. at p. 576.)

In the instant case, three police officers testified to the facts related *ante*, and a criminalist testified to the identification of the contraband. It is the exclusive function of the trier of fact to assess the credibility of witnesses and draw reasonable inferences from the evidence. (*People v. Alcala* (1984) 36 Cal.3d 604, 623.) The trial court properly instructed the jury on the proper manner to evaluate both lay witness testimony and expert witness testimony, and the jury's verdict indicates it found the prosecution witnesses credible.

When appellant asserts that he was not seen selling anything, it is not clear whether he challenges his original detention for selling cigarettes and tampons or his conviction for possession of marijuana for sale. We first observe that appellant made no challenge below to the reasonableness of his detention and has therefore not preserved this issue on appeal. In any event, there were sufficient "specific and articulable facts" to support an objectively reasonable suspicion that appellant was illegally selling goods on the street. (*Terry v. Ohio* (1968) 392 U.S. 1, 21.) The officers clearly had reasonable suspicion to detain appellant based on the fact of his proximity to the cardboard-box display of items for sale. Therefore, although it is correct that an officer's subjective belief is insufficient to justify a detention, this principle has no application in the instant case. Moreover, "'[t]he possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . . .'" (*People v. Souza* (1994) 9 Cal.4th 224, 233.) In addition, appellant ran away while Officer Rice was checking for outstanding warrants. As the United States Supreme Court pointed out in

Illinois v. Wardlow (2000) 528 U.S. 119, "[h]eadlong flight -- wherever it occurs -- is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." (*Id*. at p. 124.)

Finally, if appellant refers to the fact that he was not seen selling marijuana, the evidence was sufficient to sustain his conviction. Officer Amber Morales, who qualified as an expert in narcotics sales, testified that, in her opinion, the marijuana found in appellant's fanny pack was possessed for sale because of the large quantity, the packaging in quantities constituting $5 and $10 bags, the miscellaneous small bills, the lack of marijuana-smoking paraphernalia, and the fact that appellant was not under the influence.

With respect to the prosecution's use of photographs of the contraband rather than the contraband itself, this procedure is required by The Superior Court of Los Angeles County, Local Rules, rule 6.28(b), which provides that no hazardous material, including controlled substances, may be brought to the courtroom. In any event, the prosecution established the chain of custody of the marijuana from the time it was discovered at the police station through its analysis in the laboratory, and a criminalist testified as to its nature. Therefore, the evidence establishing that appellant possessed a controlled substance was sufficient.

Finally, there is no indication in the record that appellant received the midterm sentence and an additional year for a prison prior because of any prejudice or retaliation on the part of the prosecutor or the court because of appellant's refusal to plea bargain. According to the record, the prosecution offered appellant probation with credit for time served at one point, and later on offered him two years in prison. Appellant refused both offers. The probation officer recommended the high term of three years for the crime, finding five factors in aggravation and none in mitigation. The aggravating factors were that the crime reflected planning and professionalism, that appellant had served prior prison terms, that appellant was on parole, and that his prior performances on probation and parole were unsatisfactory. Clearly, the trial court showed leniency in sentencing appellant to the middle term.

We conclude that appellant's arguments are without merit. In addition, we have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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